

# **COMPLIANCE AUDIT REPORT**

## **STATE OF MAINE WORKERS' COMPENSATION BOARD**



**Gallagher Bassett Services  
October 15, 2002**

### **Monitoring, Audit & Enforcement (MAE) Division**

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## SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined 38 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Our audit revealed:

Gallagher Bassett Services (GBS) is a third party administrator for self-insured companies for workers' compensation coverage.

- Of the 38 claim files audited, there were 16 “lost time” claims, 16 “medical only” claims and 6 “incident only” claims.
- The 16 “lost time” claims sort out as follows:
  - Form filing:
    - Five claims were compensable lost time claims.
      - Four compensable lost time claims' Employer's First Report of Occupational Injury or Disease (WCB-1) were filed timely which is in compliance with Title 39-A, M.R.S.A, section 303
      - One compensable lost time claims' WCB-1 was filed late with the WCB, which is not in compliance with Title 39-A, M.R.S.A, section 303. This problem has been resolved between the self-insured employer and GBS
    - Eleven claims were non-compensable lost time claims.
      - Eight non-compensable lost time claims' Employer's First Report of Occupational Injury or Disease (WCB-1) were filed timely which is in compliance with Title 39-A, M.R.S.A, section 303.
      - Three non-compensable lost time claims' WCB-1 were filed late or not filed with the WCB, which is not in compliance with Title 39-A, M.R.S.A, section 303. This problem has been resolved between the self-insured employer and GBS.

Title 39-A, M.R.S.A section 303 provides the requirements for Reports to Board.

- It appears that the First Report (WCB-1) filing requirements were not 100 percent compliant. The compliance rate is 73.34 percent. GBS has confronted the issue of an effective method of obtaining necessary information from their employers to be able to file this form more timely. See “Form Filing”.
- A significant form filing compliance problem appears to be in the filing of the Wage Statement (WCB-2) and Schedule of Dependent(s) and Filing Status Statement (WCB-2A). The compliance rates for these forms filed timely are 33.34 and 16.67 percent respectively. The requirements for filing these two forms are found in Title 39-A, M.R.S.A section 303. It appears that GBS did not have a clear understanding of their obligation to file these forms when a “lost time” claim is controverted. GBS has confronted the issue of receiving these forms timely from their self-insured clients and are working to resolve the problem. See “Form Filing”.
- The Memorandum of Payment (WCB-3) compliance rate appears to be 50 percent, which does not meet the Workers Compensation Boards’ performance benchmark of 75 percent. See “Form Filing”.
- The Modification (WCB-4) compliance rate appears to be 100 percent. See “Form Filing”.
- The Notice of Controversy (WCB-9) compliance rate appears to be 100 percent. GBS has a clear understanding of the requirements to file this form timely. See “Form Filing”.
- The Statement of Compensation Paid (WCB-11) compliance rate appears to be 20 percent. GBS did not understand (at that time) the rule change of March 4, 2001. GBS now has a clear understanding of the requirements to file this form timely. See “Form Filing”.

➤ Timeliness of the five compensable claims:

- Two compensated claims were paid the initial indemnity benefit timely, which is in compliance with Title 39-A, M.R.S.A. section 205.
- Two compensated claims were *not* paid the initial indemnity benefits timely, which is not in compliance with Title 39-A, M.R.S.A. section 205.
- One compensated claim was not included in the review of benefit payments because it was found that GBS did not begin management of this claim until 01/01/02.
- Sixty-nine of the subsequent payments were paid within the 7-day requirement, which is in compliance with. Title 39-A, M.R.S.A. section 205.
- Four subsequent payments were not paid timely which is not in compliance with Title 39-A, M.R.S.A. section 205.

Title 39-A, M.R.S.A. section 205 (2) provides the requirements for benefit payment.

- The initial indemnity payment benefit compliance rate is at 50 percent. This compliance rate does not meet the WCB performance benchmark, which is at 80 percent. See “Indemnity Benefits”.

- The subsequent payment of benefits compliance rate is 94.52 percent. GBS has confronted the issue of an effective method of obtaining necessary information from their employers to be able to file this forms more timely. See “Indemnity Benefits”.

➤ Accuracy of the five compensable claims:

- An overpayment of \$452.70 in aggregate was discovered.
- Two of the compensated claims were paid correctly which is in compliance with Title 39-A, M.R.S.A, section 212 and/or 213.
- It appears that two of the compensated claims were not paid correctly, which is not in compliance with Title 39-A, M.R.S.A, section 212 and/or 213.  
The following is a brief description of the appearance of non-compliance:
  - One claim’s overpayment appears to be due to the use of the wrong compensation rate selected from the weekly benefit table.
  - One claim’s overpayment appears to be due to miscalculation of earnings resulting in the wrong weekly compensation rate.

Title 39-A, M.R.S.A section 212 and 213 provides requirements for compensation for total incapacity and partial incapacity.

- One claim had a Notice of Controversy (WCB-9) filed timely, which is in compliance with Rule 1 section 1(C).
  - This claim had the dispute resolved before the audit, resulting in the compensation payment made 33 days after the mediation which is not in compliance with Title 39-A, M.R.S.A section 324. (This claim is also included in the five compensated claims category).

The Rules and Regulations are sent forth pursuant to Title 39-A, M.R.S.A. Title 39-A, M.R.S.A. section 324 provides the requirements for benefit payment.

- The accuracy of both, average weekly wage calculations and weekly benefit rate, compliance rates are at 33.34 percent. See “Indemnity Benefits”.

The Audit Division would like to thank Gallagher Bassett Services and it’s staff for the use of their facilities and providing the audit staff the necessary materials needed to complete the audit in a proficient manner. GBS’ Portland office, have graciously complied with all the requests from this Division.

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<sup>1</sup> “Incident only” Claims incur no medical expenses and less than a day of lost time.

## **PENALTIES**

### **A. Penalties Allowed by Law (Payable to the Workers' Compensation Board)**

#### 39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

#### 39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

- Four (4) forms not filed (\$400.00).

#### 39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

- Fourteen (14) forms filed late (\$1,400.00).

#### 39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

## **PENALTIES (Continued)**

### **B. Penalties Allowed by Law (payable to injured employees and the Workers' Compensation Board)**

39-A M.R.S.A. Sec. 324(2)(A)

“Except as otherwise provided by section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the board shall assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

Violations of §324 were found in the following claim:

- Kimberly Difazio vs. BJ's Wholesale Club  
Date of Injury: 06-08-01  
Gallagher Bassett file 011949-001288-WC-01  
WCB File #1009089  
Indemnity payment made 33 days after mediation agreement.  
Date of the mediation agreement: 10/03/01

## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	2	50.00%
15 +	Days		2	50.00%
Total Due			4	100.00%

### B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	69	94.52%
8-14	Days		3	4.12%
15 +	Days		1	1.36%
Total Due			73	100.00%

### C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:3				
Correct		<b>Compliant</b>	1	33.34%
Incorrect			1	33.33%
Unknown			1	33.33%
Total			3	100.00%

### D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated: 3				
Correct		<b>Compliant</b>	1	33.34%
Incorrect			2	66.66%
Total			3	100.00%



## FORM FILING

### A. First Report (WCB-1)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	11	73.34%
Filed Late		3	20.00%
Not Filed		1	6.66%
Total		15	100.00%

### B. Wage Statement (WCB-2)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	2	33.34%
Filed Late		3	50.00%
Not Filed		1	16.66%
Total		6	100.00%

### C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	1	16.67%
Filed Late		3	50.00%
Not Filed		2	33.33%
Total		6	100.00%

### D. Memorandum of Payment (WCB-3)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	2	50.00%
Filed Late		2	50.00%
Total		4	100.00%

## FORM FILING (Continued)

### E. Discontinuance or Modification (WCB-4)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	1	100.00%
Not Filed		0	0.00%
Total		1	100.00%

### F. Notice of Controversy (WCB-9)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	3	100.00%
Filed Late		0	0.00%
Total		3	100.00%

### G. Statement of Compensation Paid (WCB-11)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	1	20.00%
Filed Late		4	80.00%
Total		5	100.00%